

February 2, 2009

Governor's Office of Planning and Research

DWR comments on Governor's Office of Planning and Research (OPR)
"Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions"
(released January 2009)

The Department of Water Resources (DWR) commends the Governor's Office of Planning and Research for its work in preparing the *"Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions"* as required under SB 97 (Draft Amendments). The Draft Amendments provide an excellent starting point for comment and discussion about this complex and evolving issue. DWR is providing some general comments on the Draft Guidelines at this time. We may follow up at a later date with more specific comments.

DWR's role

DWR prepares environmental documents on many kinds of projects including dam safety projects such as building or repairing dams; flood control and protection projects such as levee repairs and set back levees; water supply and reliability projects such as off-stream storage reservoirs and Delta water conveyance structures; multi-purpose land management activities which incorporate flood control/protection, wildlife habitat and agriculture; and programs such as FERC relicensing of Oroville Reservoir, changes to long-term water supply contracts, and purchases of water for the State Water Project and others, including the Drought Water Bank. DWR must consider both the potential increase in greenhouse gases (GHGs) caused by a project and the potential impacts on a project now and in the future as a result of Climate Change.

In 2006, DWR released a report on "Progress on Incorporating Climate Change into Management of California's Water Resources" which provides information on potential impacts of selected climate change scenarios to operations of the State Water Project and Central Valley Project, Delta water quality, flood management and evapotranspiration. As understanding of climate change improves, the challenge for California's water community is to develop and implement strategies that improve resiliency, reduce risk, and increase sustainability for water and flood management systems and the ecosystems upon which they depend. In the fall of 2008, DWR recently released its report "Managing an Uncertain Future; Climate Change Adaptation Strategies for California's Water" which focuses discussion on the need for California's water managers to adapt to impacts of climate change and proposes 10 adaptation strategies.

General Comments

CEQA analyses generally have up to four aspects: measuring impacts; significance of impacts, mitigation measures and/or alternatives and overriding considerations. Our comments below address issues relating to these aspects. However, DWR agrees with

OPR's observation in the Notice attached to the Draft Guidelines that the most difficult issue facing DWR and others is how to determine when an increase in GHGs is significant.

1. **Retain discretion of Lead Agency with regard to all four aspects of review.** One way of approaching a CEQA analysis for GHG emissions would be to have a clearly defined quantitative measure of impacts and mitigation measures and a clearly defined quantitative significance threshold for each project. Another approach is to establish a statewide threshold as OPR has asked of the CARB or thresholds in regional or other plans. Until there is more certainty that these approaches work for all types of projects with GHG emissions, **DWR strongly supports the current approach in the Draft Guidelines that maintains the discretion of the Lead Agency** to determine how to analyze each of these aspects and how to support its decision with substantial evidence.
2. **Provide flexibility for different types of projects.** In general, the Draft Guidelines appear to be focusing on transportation and energy sector emissions, both important sectors to address when trying to achieve the ambitious goals of the California Global Warming Solutions Act. However, in applying approaches that will facilitate programmatic or project level analysis of these sectors, the Draft Guidelines should not unreasonably constrain the ability of Lead Agencies to adopt analyses appropriate for a range of other projects, including environmentally beneficial projects such as habitat restoration or vegetation management. In general, the Draft Guidelines should recognize and create opportunities for Lead Agencies to address GHG impacts for projects that are not within the range of regional transportation or growth management plans referenced.
3. **Retain discretion of Lead Agency to determine amount of GHG emissions associated with a project.** DWR agrees with the language in 15064.4 that a "lead agency should make a good faith effort, based upon available information, to describe, calculate or estimate the amount" of GHG emissions associated with a project. There may be models or methodologies that currently are able to identify ways to determine some types of impacts, such as those that are caused by construction activities or increased or decreased transportation or energy use. For other types of sources (i.e. carbon flux from land use changes), the determination of impact is not well understood. Information and methodologies for some of these impacts may be non-existent or are only beginning to be examined. Available scientific evidence may be conflicting or may vary significantly from location to location or by site specific characteristics. An example is the conversion of land uses such as converting an island used primarily for agricultural purposes to one used primarily as a wetland. DWR agrees, therefore, that it is critical to preserve the options of Lead Agencies to use qualitative methods such as models and methodologies as well as quantitative analyses to discuss limitations of qualitative methods or to identify impacts. The Draft Guidelines appear to state that all qualitative standards are

performance based standards. We suggest changing the language of 15064.4(b) (2) to say “Rely on qualitative ~~or other~~ assessment or performance based standards” or “Rely on qualitative ~~or other~~ assessment methods including performance based standards”.

4. **Retain discretion of Lead Agency to allow long-lived projects that have large construction emissions—but very low annual emissions rates—to reasonably quantify their gross project impacts.** DWR made this point in its comments (attached) to CARB, dated November 26, 2008, on the *Preliminary Draft Staff Proposal on Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under CEQA*. The proposed guidance did not clearly explain how construction emissions and other one-time or temporary emissions will be treated. For many of the projects contemplated by DWR and others, for instance, construction emissions may represent the majority of emissions produced by the project. In fact, ongoing operational emissions from many of the Department’s projects are minimal or at least well below the threshold of 7000 metric tons of carbon dioxide equivalent per year proposed by ARB staff. The Department suggested that the Board address this issue by considering the amortization of construction emissions over the life of the project (using a 0% discount rate).
5. **Retain discretion of Lead Agency to consider the net impact of the project with regard to GHG emissions.** The Draft Guidelines refer to GHG emissions and don’t discuss “net” emissions”. It is important that a Lead Agency retain the discretion to consider case-specific factors applicable to the many projects that are otherwise environmentally beneficial or even climate change reducing in the long-term that otherwise will have GHG impacts in the short term (for example, during the construction phase of a solar facility or during earth moving or management of a carbon sequestration project). Subsection 15064.4(a)(3) appears to only apply to increased energy efficiency or GHG emissions from existing facilities. This subsection could be improved by additional language that states, “the extent to which the project may otherwise reduce GHG emissions or minimize future emissions”. The provisions of Section 15064.4 may not adequately reflect the GHG balance of projects (since some projects may have a temporary or minimal GHG impact but may also reduce GHG impacts). One way to approach this would be to add a new subsection 15064.4(a)(5) to say “(5) The extent to which the increases in GHG emissions of a project are offset by future decreases in its GHG emissions”. Another way to approach the issue is to change the language in Subsection 15064.4(b) to include the word “net” as follows, “...calculate or estimate the amount of net greenhouse gas emissions associated with a project...”.
6. **Retain Lead Agency flexibility with regard to establishing significance thresholds.** The difficulty for Lead Agencies with regard to establishing significance thresholds relates primarily to cumulative impacts. Given the State’s goal of reducing GHG emissions to 1990 levels by the year 2020, one of

the questions facing CEQA practitioners is whether it is possible for a Lead Agency to ever find that a project that results in increased GHG emissions has a less-than-significant cumulative impact with regard to GHG emissions. Because the language in subsection 15130 (f) applies the fair argument standard, depending on how it is interpreted, subsection 15130 (f) could conceivably put most, if not all, of DWR's construction and restoration projects into a category that would require a finding of a significant cumulative impact with regard to GHG emissions.

Current approaches to the issue currently describe several choices: determine that all increases are significant (zero thresholds); determine that none are significant if they fall below a certain threshold; or determine each instance on a case by case basis. Although the Draft Guidelines leave a lot of discretion with the Lead Agency, the language in Section 15130(f) and the other sections of Section 15130 could be seen as a direction that Lead Agencies should establish a zero threshold unless they can develop some sort of programmatic approach that sets up a defensible threshold. As this area of analysis is a developing area of science and law, it is important to maintain the flexibility and discretion of lead agencies to approach the issue of significance with regard to cumulative impacts.

Sincerely,

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